

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

BARBARA F. HEATH,)	
)	No. CV-06-0070-MWL
Plaintiff,)	
)	ORDER GRANTING DEFENDANT'S
v.)	MOTION FOR SUMMARY JUDGMENT
)	
JO ANNE B. BARNHART,)	
Commissioner of Social)	
Security,)	
)	
Defendant.)	
)	

BEFORE THE COURT are cross-motions for summary judgment, noted for hearing without oral argument on September 11, 2006. (Ct. Rec. 12, 15). Plaintiff Barbara Heath ("Plaintiff") filed a reply brief on August 24, 2006. (Ct. Rec. 17). Attorney Maureen Rosette represents Plaintiff; Special Assistant United States Attorney Jeffrey H. Baird represents the Commissioner of Social Security ("Commissioner"). The parties have consented to proceed before a magistrate judge. (Ct. Rec. 7). After reviewing the administrative record and the briefs filed by the parties, the Court **GRANTS** Defendant's Motion for Summary Judgment (Ct. Rec. 15) and **DENIES** Plaintiff's Motion for Summary Judgment (Ct. Rec. 12).

JURISDICTION

On February 7, 2003, Plaintiff filed an application for Disability Insurance Benefits ("DIB"), alleging disability since July 20, 1998,¹ due to chronic fatigue, fibromyalgia, sleeping problems, arthritis in her lower back, carpal tunnel and soft tissue damage in her arms. (Administrative Record ("AR") 65-72, 80). Plaintiff's application for DIB was denied initially and on reconsideration.

On June 15, 2005, Plaintiff appeared before Administrative Law Judge ("ALJ") Mary B. Reed, at which time testimony was taken from Plaintiff and vocational expert Tom Moreland. (AR 341-393). On August 22, 2005, the ALJ issued a decision finding that Plaintiff was not disabled. (AR 17-36). The Appeals Council denied a request for review on February 17, 2006. (AR 6-9). Therefore, the ALJ's decision became the final decision of the Commissioner, which is appealable to the district court pursuant to 42 U.S.C. § 405(g). Plaintiff filed this action for judicial review pursuant to 42 U.S.C. § 405(g) on March 3, 2006. (Ct. Rec. 1).

STATEMENT OF FACTS

The facts have been presented in the administrative hearing transcript, the ALJ's decision, the briefs of both Plaintiff and the Commissioner and will only be summarized here. Plaintiff was 54 years old on the date of the ALJ's decision, has more than a high school education and has past work experience as a hospital

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¹Plaintiff's date last insured was September 30, 2003. (AR 73). Plaintiff thus had the burden of demonstrating she was disabled on or prior to September 30, 2003. (AR 18, 344).

1 admitting clerk, general clerk, cashier II, collections clerk and
2 telephone receptionist. (AR 17-18).

3 Plaintiff testified at the administrative hearing held on
4 June 15, 2005, that she stopped working in July of 1998 following
5 carpal tunnel surgery on her right hand. (AR 349). Plaintiff
6 indicated that, following this surgery, she had a lot of pain and
7 numbness in her arm that continued to bother her at present. (AR
8 350). She stated that she had numbness which prevented her from
9 grasping well, she could not write for long periods and, if she
10 held a book, quilted or used scissors, her hand would go to sleep.
11 (AR 350, 365-367). Plaintiff testified that she could work on a
12 computer, continuously typing or using a mouse, for only about 10
13 minutes at a time. (AR 351).

14 Plaintiff stated that she was informed by a doctor in the
15 late 1980's that she has fibromyalgia which caused muscle and
16 joint soreness but did not prevent her from working. (AR 354).
17 She indicated that she has problems with bladder control and also
18 has carpal tunnel in her left hand. (AR 355). She also testified
19 that she has chronic fatigue and difficulty with sleep. (AR 356).
20 Plaintiff additionally stated that she has problems with migraine
21 headaches, has experienced periodic depression following the
22 carpal tunnel surgery, and has degenerative arthritis in her lower
23 back. (AR 358, 360).

24 Plaintiff testified that she could walk three miles three
25 years ago, but could only currently walk three blocks at a time,
26 sit about 20 to 30 minutes at a time and stand for only three to
27 four minutes at a time. (AR 364, 368). Plaintiff stated that
28 carrying a gallon of milk required her to use both arms and that

1 she could stand and hold her 21 pound grandson if someone were to
2 hand him to her. (AR 369).

3 **SEQUENTIAL EVALUATION PROCESS**

4 The Social Security Act (the "Act") defines "disability" as
5 the "inability to engage in any substantial gainful activity by
6 reason of any medically determinable physical or mental impairment
7 which can be expected to result in death or which has lasted or
8 can be expected to last for a continuous period of not less than
9 twelve months." 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The
10 Act also provides that a Plaintiff shall be determined to be under
11 a disability only if his impairments are of such severity that
12 Plaintiff is not only unable to do his previous work but cannot,
13 considering Plaintiff's age, education and work experiences,
14 engage in any other substantial gainful work which exists in the
15 national economy. 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).
16 Thus, the definition of disability consists of both medical and
17 vocational components. *Edlund v. Massanari*, 253 F.3d 1152, 1156
18 (9th Cir. 2001).

19 The Commissioner has established a five-step sequential
20 evaluation process for determining whether a person is disabled.
21 20 C.F.R. §§ 404.1520, 416.920. Step one determines if he is
22 engaged in substantial gainful activities. If he is, benefits are
23 denied. 20 C.F.R. §§ 404.1520(b), 416.920(b). If he is not, the
24 decision maker proceeds to step two, which determines whether
25 Plaintiff has a medically severe impairment or combination of
26 impairments. 20 C.F.R. §§ 404.1520(c), 416.920(c).

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1 If Plaintiff does not have a severe impairment or combination
2 of impairments, the disability claim is denied. If the impairment
3 is severe, the evaluation proceeds to the third step, which
4 compares Plaintiff's impairment with a number of listed
5 impairments acknowledged by the Commissioner to be so severe as to
6 preclude substantial gainful activity. 20 C.F.R. §§ 404.1520(d),
7 416.920(d); 20 C.F.R. § 404 Subpt. P App. 1. If the impairment
8 meets or equals one of the listed impairments, Plaintiff is
9 conclusively presumed to be disabled. If the impairment is not
10 one conclusively presumed to be disabling, the evaluation proceeds
11 to the fourth step, which determines whether the impairment
12 prevents Plaintiff from performing work he has performed in the
13 past. If Plaintiff is able to perform his previous work, he is
14 not disabled. 20 C.F.R. §§ 404.1520(e), 416.920(e). If Plaintiff
15 cannot perform this work, the fifth and final step in the process
16 determines whether Plaintiff is able to perform other work in the
17 national economy in view of his residual functional capacity and
18 his age, education and past work experience. 20 C.F.R. §§
19 404.1520(f), 416.920(f); *Bowen v. Yuckert*, 482 U.S. 137 (1987).

20 The initial burden of proof rests upon Plaintiff to establish
21 a *prima facie* case of entitlement to disability benefits.
22 *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th Cir. 1971); *Meanel v.*
23 *Apfel*, 172 F.3d 1111, 1113 (9th Cir. 1999). The initial burden is
24 met once Plaintiff establishes that a physical or mental
25 impairment prevents him from engaging in his previous occupation.
26 The burden then shifts to the Commissioner to show (1) that
27 Plaintiff can perform other substantial gainful activity and (2)
28 that a "significant number of jobs exist in the national economy"

1 which Plaintiff can perform. *Kail v. Heckler*, 722 F.2d 1496, 1498
2 (9th Cir. 1984).

3 **STANDARD OF REVIEW**

4 Congress has provided a limited scope of judicial review of a
5 Commissioner's decision. 42 U.S.C. § 405(g). A court must uphold
6 the Commissioner's decision, made through an ALJ, when the
7 determination is not based on legal error and is supported by
8 substantial evidence. See *Jones v. Heckler*, 760 F.2d 993, 995
9 (9th Cir. 1985); *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir.
10 1999). "The [Commissioner's] determination that a plaintiff is
11 not disabled will be upheld if the findings of fact are supported
12 by substantial evidence." *Delgado v. Heckler*, 722 F.2d 570, 572
13 (9th Cir. 1983) (citing 42 U.S.C. § 405(g)). Substantial evidence
14 is more than a mere scintilla, *Sorenson v. Weinberger*, 514 F.2d
15 1112, 1119 n.10 (9th Cir. 1975), but less than a preponderance.
16 *McAllister v. Sullivan*, 888 F.2d 599, 601-602 (9th Cir. 1989);
17 *Desrosiers v. Secretary of Health and Human Services*, 846 F.2d
18 573, 576 (9th Cir. 1988). Substantial evidence "means such
19 evidence as a reasonable mind might accept as adequate to support
20 a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971)
21 (citations omitted). "[S]uch inferences and conclusions as the
22 [Commissioner] may reasonably draw from the evidence" will also be
23 upheld. *Mark v. Celebrezze*, 348 F.2d 289, 293 (9th Cir. 1965).
24 On review, the court considers the record as a whole, not just the
25 evidence supporting the decision of the Commissioner. *Weetman v.*
26 *Sullivan*, 877 F.2d 20, 22 (9th Cir. 1989) (quoting *Kornock v.*
27 *Harris*, 648 F.2d 525, 526 (9th Cir. 1980)).

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1 It is the role of the trier of fact, not this court, to
2 resolve conflicts in evidence. *Richardson*, 402 U.S. at 400. If
3 evidence supports more than one rational interpretation, the court
4 may not substitute its judgment for that of the Commissioner.
5 *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579
6 (9th Cir. 1984). Nevertheless, a decision supported by
7 substantial evidence will still be set aside if the proper legal
8 standards were not applied in weighing the evidence and making the
9 decision. *Browner v. Secretary of Health and Human Services*, 839
10 F.2d 432, 433 (9th Cir. 1987). Thus, if there is substantial
11 evidence to support the administrative findings, or if there is
12 conflicting evidence that will support a finding of either
13 disability or nondisability, the finding of the Commissioner is
14 conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir.
15 1987).

16 ALJ'S FINDINGS

17 The ALJ found at step one that Plaintiff has not engaged in
18 substantial gainful activity since her alleged onset date. (AR
19 18). At step two, the ALJ determined that Plaintiff has the
20 severe impairments of obesity, status post right carpal tunnel
21 repair and degenerative disc disease of the lumbar spine, but that
22 she does not have an impairment or combination of impairments
23 listed in or medically equal to one of the Listings impairments.
24 (AR 27-28).

25 The ALJ concluded that Plaintiff has the residual functional
26 capacity ("RFC") to perform light exertion work. (AR 34). She
27 found that Plaintiff could lift and carry 20 pounds occasionally
28 and 10 pounds frequently; could sit, stand or walk 6 hours out of

1 an 8 hour day with normal breaks; should avoid climbing ropes,
2 ladders and scaffolds, concentrated exposure to hazards and
3 unprotective heights; and is limited to only occasionally climbing
4 stairs and ramps, bending and stooping and no more than frequently
5 handling with her right dominant hand. (AR 34).

6 At step four of the sequential evaluation process, the ALJ
7 found that, based on Plaintiff's RFC, she could perform her past
8 relevant work as a hospital admitting clerk, a general clerk, a
9 cashier II, a sales clerk, a collection clerk, and a telephone
10 receptionist as previously performed and as generally performed in
11 the national economy. (AR 35). Accordingly, the ALJ determined
12 at step four of the sequential evaluation process that Plaintiff
13 was not disabled within the meaning of the Social Security Act.
14 (AR 35-36).

15 ISSUES

16 Plaintiff contends that the Commissioner erred as a matter of
17 law. Specifically, she argues that:

18 1. The ALJ erred by failing to provide proper reasoning for
19 finding her testimony not fully credible; and

20 2. Plaintiff is more limited from a physical standpoint
21 than what was determined by the ALJ.

22 This court must uphold the Commissioner's determination that
23 Plaintiff is not disabled if the Commissioner applied the proper
24 legal standards and there is substantial evidence in the record as
25 a whole to support the decision.

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DISCUSSION

A. Plaintiff's Credibility

Plaintiff argues that the ALJ erred by failing to provide clear and convincing reasons for rejecting her symptom testimony. (Ct. Rec. 13, pp. 13-17). Plaintiff contends that, based on her testimony regarding her complaints and limitations, the ALJ should have determined that she is much more limited from a physical standpoint. (Ct. Rec. 13, p. 16). The Commissioner responds that the ALJ gave good reasons for finding Plaintiff not credible. (Ct. Rec. 16, pp. 8-9). In this case, the ALJ found that the record demonstrated that Plaintiff was less than fully credible regarding her complaints and limitations. (AR 33).

It is the province of the ALJ to make credibility determinations. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). However, the ALJ's findings must be supported by specific cogent reasons. *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990). Once the claimant produces medical evidence of an underlying impairment, the ALJ may not discredit her testimony as to the severity of an impairment because it is unsupported by medical evidence. *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998) (citation omitted). Absent affirmative evidence of malingering, the ALJ's reasons for rejecting the claimant's testimony must be "clear and convincing." *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995).

The ALJ noted that although Plaintiff has received treatment for her impairments, the treatment has been essentially routine and/or conservative in nature. (AR 30). Furthermore, the ALJ indicated that Plaintiff's description of limited daily activities

1 was inconsistent with the record evidence. It is well-established
2 that the nature of daily activities may be considered when
3 evaluating credibility. *Fair*, 885 F.2d at 603. As noted by the
4 ALJ, the record evidence demonstrates that in June of 2000
5 Plaintiff was able to walk for exercise 30 to 60 minutes a day
6 plus do some gardening. (AR 23, 280). An assessment by Dr.
7 Colwell in September of 2000 revealed that Plaintiff was walking
8 two and one-half miles per day, five to six times per week at a
9 moderate pace. (AR 208). He opined that Plaintiff would be able
10 to return to work "in the very near future, if not at this time."
11 (AR 207). Dr. Colwell noted in November of 2000 that Plaintiff's
12 symptoms had diminished, her grip strength was improving and her
13 progression had been good. (AR 212). On February 8, 2001, Dr.
14 Colwell noted that, while Plaintiff continued to have episodic
15 hand pain, she was fully capable of performing all her home care
16 and working full time. (AR 222). On July 9, 2001, Dr. Gray
17 indicated that Plaintiff had a busy social schedule raising her
18 children and grandchildren, and that medicine had been helping her
19 "real well." (AR 284). On May 8, 2002, it was noted that she had
20 a little bit more energy and was "just feeling wonderful." (AR
21 289). On February 5, 2003, Dr. Colwell noted that
22 electromyography ("EMG") studies revealed "an excellent outcome
23 from the carpal tunnel surgery." (AR 227). As noted by the ALJ,
24 in the Application to Reopen Claim, Dr. Colwell indicated that
25 Plaintiff's condition does not prevent her from working. (AR 25,
26 32, 235). Therefore, Plaintiff's daily activities and exhibited
27 functional capacity level indicates that Plaintiff functions at a
28 level greater than she alleges.

1 Plaintiff's self reports are also inconsistent.
2 Inconsistencies in a disability claimant's testimony supports a
3 decision by an ALJ that a claimant lacks credibility with respect
4 to her claim of disabling pain. 42 U.S.C.A. § 423(d)(5)(A),
5 Nyman v. Heckler, 779 F.2d 528, 531 (9th Cir. 1986). On February
6 26, 2003, Plaintiff reported to being able to walk for 30 minutes,
7 stand for 45 minutes, sit for 40 minutes and work in the yard or
8 garden for about 30 to 40 minutes at a time. (AR 97-98). This
9 reported activity is inconsistent with the testimony she gave at
10 the administrative hearing. She testified that she could only
11 walk about three blocks at a time, sit about 20 to 30 minutes at a
12 time and stand for only three to four minutes at a time. (AR 364,
13 368). Plaintiff additionally informed the ALJ at the
14 administrative hearing that her husband had undergone four
15 surgeries in the last year and had been unable to do anything.
16 (AR 372). Yet, she earlier testified that her husband does most
17 of the housework. (AR 362-363).

18 Plaintiff's testimony regarding her functioning is
19 additionally inconsistent with the medical reports of record. On
20 May 10, 1999, a physical capacities exam revealed that Plaintiff
21 was able to work at the light-medium physical demand level for an
22 eight hour day. (AR 170). The exam demonstrated Plaintiff's
23 ability to lift, carry, push and pull eight to 17 pounds
24 constantly and 18 to 35 pounds frequently. (AR 172). An August
25 23, 1999 independent medical examination conducted by three
26 experts in the medical field, a neurologist, an orthopedic surgeon
27 and a rheumatologist, concluded that there were no objective
28 findings to base limitations or restrictions preventing Plaintiff

1 from working.² (AR 31, 153-162). It was noted that the physical
2 assessment did not concur with Plaintiff's description of her
3 limitations. (AR 31, 161). A June 15, 2000, letter from Alfonso
4 Oliva, M.D., indicated that his examination of Plaintiff's upper
5 extremities revealed no evidence of weakness in the biceps,
6 triceps, or shoulder muscles. (AR 167). Dr. Oliva reported that
7 the extensors of the wrists and digits were tender over the
8 proximal forearm but he was unable to elicit any true weakness and
9 rated it a 5/5. (AR 167). Following a January 2004 motor vehicle
10 accident, an exam revealed that Plaintiff had good hand grip
11 strength bilaterally, rated at a 5/5, and had no neurosensory
12 deficit in the upper extremities. (AR 307). Susan Lehman, D.O.,
13 noted on March 31, 2005, that Plaintiff had the capacity to
14 occasionally lift and carry 25 pounds, frequently lift and carry
15 10 pounds, and was not limited in her upper extremities. (AR 322-
16 325).

17 The May 10, 1999 physical capacities exam also suggested
18 "very poor effort or voluntary submaximal effort" on Plaintiff's
19 behalf. (AR 170). It was noted that Plaintiff's hand test
20 validity testing was indicative of "poor effort." (AR 170).
21 Although the undersigned agrees that this does not establish that
22 Plaintiff was malingering, evidence of poor effort on exam is a
23 relevant factor to Plaintiff's overall credibility.³

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25 ²This is consistent with Dr. Colwell's opinion, as noted above, that
26 Plaintiff's condition does not prevent her from working (AR 235), as well as
27 the May 10, 1999 physical capacities exam which revealed that Plaintiff was
able to work at the light-medium physical demand level for an eight hour day
(AR 170).

28 ³A lack of cooperation or a display of "poor effort" by a claimant
during an examination may be used to illustrate a claimant's tendency to
exaggerate. *Tonapetyan v. Halter*, 242 F.3d 1144, 1148 (9th Cir. 2001).

1 The ALJ is responsible for reviewing the evidence and
2 resolving conflicts or ambiguities in testimony. *Magallanes v.*
3 *Bowen*, 881 F.2d 747, 751 (9th Cir. 1989). It is the role of the
4 trier of fact, not this Court, to resolve conflicts in evidence.
5 *Richardson*, 402 U.S. at 400. The Court has a limited role in
6 determining whether the ALJ's decision is supported by substantial
7 evidence and may not substitute its own judgment for that of the
8 ALJ even if it might justifiably have reached a different result
9 upon de novo review. 42 U.S.C. § 405(g).

10 The objective evidence, as indicated by the ALJ, shows that
11 Plaintiff has good grip strength bilaterally and no neurosensory
12 deficits in her upper extremities. (AR 34). With the exception
13 of Plaintiff's own subjective complaints and a March 9, 1999
14 medical report (AR 270),⁴ there is no evidence of record
15 indicating that Plaintiff is limited to the extent that she
16 alleges. The weight of the evidence of record reveals that
17 Plaintiff presents herself as more limited than what she really
18 is. After reviewing the record, the undersigned finds that the
19 rationale provided by the ALJ was clear and convincing for a
20 conclusion that Plaintiff's allegations were not fully credible in
21 this case.

22 **B. Physical Limitations**

23 Plaintiff argues that she is more limited from a physical
24 standpoint than as determined by the ALJ in this case. (Ct. Rec.
25 13, p. 12). Plaintiff argues that there was no substantial
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28 ⁴As noted in Section B below, the ALJ properly rejected Dr. Gray's
March 9, 1999 medical report. See *infra*.

1 evidence to support the decision of the ALJ regarding her RFC.
2 (Ct. Rec. 13, p. 12).

3 The ALJ concluded that Plaintiff has the physical RFC to
4 perform light exertion work with, among other restrictions, no
5 more than frequent handling with her right dominant hand. (AR
6 34). In making this determination, the ALJ rejected Dr. Gray's
7 March 9, 1999 opinion that Plaintiff would never be able to use a
8 keyboard again in an occupational status and never be able to do
9 any type of job which involves repetitive use of her right hand or
10 wrist. (AR 33, 270). The Commissioner responds that the ALJ
11 appropriately evaluated the medical evidence of record, and
12 properly rejected Dr. Gray's opinion as unsupported by the weight
13 of the record evidence. (Ct. Rec. 16, pp. 4-10). The undersigned
14 agrees.

15 The ALJ properly evaluated the evidence of record in this
16 case. (AR 18-34). With regard to Plaintiff's physical capacity,
17 the ALJ discussed a variety of medical reports which consistently
18 found that Plaintiff had good grip strength and no neurosensory
19 deficits in her upper extremities. (AR 18-34, *supra*). Other than
20 Plaintiff's own subjective complaints⁵ and Dr. Gray's March 9,
21 1999 medical report (AR 270), there is no evidence of record
22 indicating that Plaintiff is limited to any greater extent than
23 that which the ALJ determined in this case. *Supra*.

24 The ALJ rejected Dr. Grays's 1999 opinion and gave valid
25 grounds, supported by the record, for its rejection. A treating
26 physician's opinion is given special weight because of his

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28 ⁵As noted in Section A above, the ALJ properly found that Plaintiff's
allegations regarding her limitations are not totally credible in this case.
See supra.

1 familiarity with the claimant and his physical condition. *Fair v.*
2 *Bowen*, 885 F.2d 597, 604-05 (9th Cir. 1989). However, the
3 treating physician's opinion is not "necessarily conclusive as to
4 either a physical condition or the ultimate issue of disability."
5 *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989) (citations
6 omitted). To reject the opinion of a treating or examining
7 physician the ALJ must have evidence to support the decision such
8 as laboratory test results, contrary reports from other physicians
9 of record, or testimony from the claimant that was inconsistent
10 with the physician's opinion. *Magallanes*, 881 F.2d at 751-52;
11 *Andrews*, 53 F.3d 1042-43. The ALJ indicated that Dr. Gray's
12 opinion was given no weight because there was a scarcity of
13 objective findings and limited or no evidence of physical
14 examinations in his chart notes, he was not a specialist, and his
15 opinion is contradicted by other medical opinion evidence of
16 record. (AR 33).

17 As noted by the ALJ, and as indicated in Section A above, the
18 independent medical evaluation, which was performed by specialists
19 in August of 1999, revealed no objective findings to base
20 limitations or restrictions preventing Plaintiff from working.
21 (AR 153-162). This determination is consistent with Dr. Colwell's
22 2001 and 2003 opinion that Plaintiff's condition did not prevent
23 her from working (AR 222, 235) and the May 10, 1999 physical
24 capacities exam which revealed that Plaintiff was able to work at
25 the light-medium physical demand level for an eight hour day (AR
26 170).

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1 In addition, a June 15, 2000 letter from Dr. Oliva indicated
2 that Plaintiff's upper extremities revealed no evidence of
3 weakness in the biceps, triceps, or shoulder muscles. (AR 167).
4 Dr. Oliva reported that the extensors of the wrists and digits
5 were tender over the proximal forearm but he was unable to elicit
6 any true weakness and rated it a 5/5. (AR 167-168). On May 19,
7 2003, state agency reviewing physicians found that Plaintiff could
8 lift 20 pounds occasionally and 10 pounds frequently; stand, walk
9 and sit about six hours each per day; and was restricted from
10 frequent handling with her right hand. (AR 251-258). The same
11 limitations were assessed by reviewing state agency physicians on
12 December 23, 2003. (AR 299-304). A January 2004 exam revealed
13 that Plaintiff had good hand grip strength bilaterally, rated at a
14 5/5, and had no neurosensory deficit in the upper extremities.
15 (AR 307). Dr. Lehman noted on March 31, 2005, that Plaintiff had
16 the capacity to occasionally lift and carry 25 pounds, frequently
17 lift and carry 10 pounds, and was not limited in her upper
18 extremities. (AR 322-325).

19 The Court finds that the ALJ thoroughly analyzed the evidence
20 of record (AR 18-34) and provided specific and legitimate reasons
21 for rejecting Dr. Gray's March 9, 1999 finding. The substantial
22 weight of the record evidence as outlined above supports the ALJ's
23 physical RFC determination that Plaintiff is capable of performing
24 light exertion work with the following restrictions: should avoid
25 climbing ropes, ladders and scaffolds, concentrated exposure to
26 hazards and unprotective heights, is limited to only occasionally
27 climbing stairs and ramps, bending and stooping and is restricted

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1 from no more than frequent handling with her right dominant hand.
2 (AR 34). The ALJ's RFC determination is without error in this
3 case.

4 **CONCLUSION**

5 Having reviewed the record and the ALJ's conclusions, this
6 Court finds that the ALJ's decision that Plaintiff is capable of
7 performing light exertion work, including her past jobs as a
8 hospital admitting clerk, a general clerk, a cashier II, a sales
9 clerk, a collection clerk, and a telephone receptionist, jobs
10 existing in sufficient numbers in the national economy, is
11 supported by substantial evidence and free of legal error.
12 Plaintiff is thus not disabled within the meaning of the Social
13 Security Act. Accordingly,

14 **IT IS ORDERED:**

15 1. Plaintiff's Motion for Summary Judgment (**Ct. Rec.**
16 **12**) is **DENIED**.

17 2. Defendant's Motion for Summary Judgment (**Ct. Rec.**
18 **15**) is **GRANTED**.

19 3. The District Court Executive is directed to enter
20 judgment in favor of Defendant, file this Order, provide a copy to
21 counsel for Plaintiff and Defendant, and **CLOSE** this file.

22 **DATED** this 26th day of December, 2006.

23
24 s/Michael W. Leavitt
25 MICHAEL W. LEAVITT
26 UNITED STATES MAGISTRATE JUDGE
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28